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Attorneys for Plaintiffs Artisan Manufacturing Corporation

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
ARTISAN MANUFACTURING CORPORATION, :

Civil Action No.: 07 CV 11278

Plaintiff, :

- against - :

ALL GRANITE & MARBLE CORPORATION., :

Defendant. :

----- X

**DECLARATION OF JOHN MALTBIE IN FURTHER SUPPORT OF PLAINTIFFS'
MOTION FOR A PRELIMINARY INJUNCTION**

EXHIBIT I

1
2 UNITED STATES DISTRICT COURT
3 FOR THE SOUTHERN DISTRICT OF NEW YORK
4

5 ARTISAN MANUFACTURING)
6 CORPORATION,)

7 Plaintiff,)

8 vs.)

07-cv-11278 (WHP)

9 ALL GRANITE & MARBLE)
10 CORPORATION,)

11 Defendant.)
12 -----)

13
14 DEPOSITION OF SEBASTIAN SROKA
15 Parsippany, New Jersey
16 Thursday, February 7, 2008
17
18
19
20
21
22
23

24 Reported by:

FRANCIS X. FREDERICK, CSR, RPR, RMR

25 JOB NO. 15244C

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February 7, 2008
12:12 p.m.

Deposition of SEBASTIAN SROKA,
held at the offices of Hoffmann & Baron,
6 Campus Drive, Parsippany, New Jersey,
pursuant to Notice, before Francis X.
Frederick, a Certified Shorthand
Reporter, Registered Merit Reporter and
Notary Public of the States of New York
and New Jersey.

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A P P E A R A N C E S:

ARNOLD & PORTER
Attorneys for Plaintiff
399 Park Avenue
New York, New York 10022-4690
BY: JOHN MALTBIE, ESQ.

HOFFMANN & BARON, LLP
Attorneys for Defendant
6 Campus Drive
Parsippany, New Jersey 07054
BY: JON A. CHIDO, ESQ.

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S. SROKA
SEBASTIAN SROKA, called as
a witness, having been duly sworn by a
Notary Public, was examined and
testified as follows:
EXAMINATION BY
MR. MALTBIE:
Q. Good morning, Mr. Sroka. My name
is John Maltbie. I'm with the law firm of
Arnold & Porter. My law firm represents
Artisan Manufacturing Corporation, the
manufacturer and distributor of Artisan brand
sinks, in connection with a lawsuit that has
been filed against All Granite & Marble
Corporation.

Mr. Sroka, we were introduced a
few minutes ago off the record but can you
kindly state your full name and residential
address for the record.

A. My name is Sebastian Sroka. I
live in Connecticut. Address is 29 Claudia
Drive, Southington Connecticut.

Q. Mr. Sroka, prior to today, have
you ever been deposed or given testimony in
connection with a legal matter?

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S. SROKA

A. No, never.

Q. I'll just go over some of the
ground rules for today. What will happen is
I'll be asking you a series of questions
regarding your knowledge of the facts and
circumstances concerning All Granite's
promotion and use of sinks in connection with
its countertop insulation services and
specifically with respect to a design that All
Granite is using in connection with those
services.

It's your obligation to answer my
questions truthfully and to the best of your
ability. Is that understood?

A. Yes.

Q. In the event you do not understand
a question I've asked please let me know. I
will try to rephrase it. Also, if you need a
question repeated please let me know and we
can have the question read back. Is that
understood?

A. Yes.

Q. In addition, it's important that
you provide verbal answers to my question so

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S. SROKA

that the court reporter who is here between us can take my questions and your answers down and that we have an accurate record of the deposition. Is that --

A. Okay.

Q. Okay.

And if you need to take a break at any time let me know and we can take a break. Hopefully we'll get this over pretty quickly.

And I'd just ask that when I'm asking a question, please wait for me to finish the question before you begin your answer. And likewise I'll try to wait for you to finish your answer before I ask my next question.

And, Mr. Sroka, just to clarify an issue with respect to language, is it correct to say that English is not your first language?

A. Yes. Polish is my first language.

Q. And were you born in Poland?

A. Yes.

Q. And how long have you been in the United States?

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S. SROKA

A. Oh, six, almost seven years.

Q. What's the highest level of schooling that you completed?

A. In Poland we have kind of different education so I -- it's between the high school and college.

Q. Have you had any schooling here in the United States?

A. No.

Q. Do you feel comfortable answering my questions in English today?

A. I can try.

Q. Well, let me know if there's an issue.

A. Okay.

Q. We'll deal with it then.

Mr. Sroka, did you speak with anyone other than your attorney in anticipation for your testimony here this morning?

A. Just with Robert.

Q. And who is Robert?

A. Robert Deja. He was my boss.

Q. Where was he your boss?

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S. SROKA

A. At All Granite Marble.

Q. So you were an employee of All Granite?

A. Yes.

Q. When were you an employee?

A. That was on the beginning 2006 to I think March 2007.

Q. And what was your job at All Granite in that period?

A. Graphic designer.

Q. And what types of -- strike that. What were you responsible for designing while working for All Granite?

A. Many different things from the newspapers ads through web sites. Everything what is connected with graphic design.

Q. Did you have any responsibility for sales while at All Granite?

A. No.

Q. Where did you go to work? What was the location of your work address?

A. It was Ridgefield Park. 51 Austin Street.

Q. And would you go to work at

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Ridgefield Park every day or was it --

A. Yes.

Q. And was that location connected to the showroom for All Granite?

A. No. It's very different location. Different building. Like two miles from the showroom.

Q. I'm sorry. Could you repeat the address?

A. 51 Austin Street.

Q. 51 Austin Street?

A. Yes.

Q. And could you tell me if that was -- was that a commercial building or a residential building?

A. I think it's residential building.

Q. And were there any -- sorry.

A. With parts that were offices.

Q. And was that someone's home, to your knowledge?

A. I don't know.

Q. Were there other employees of All Granite that reported to work at 51 Austin Street?

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1 **S. SROKA**
2 A. Yes.
3 **Q. And how many employees would you**
4 **say?**
5 A. At this time there was like two.
6 **Q. And do you recall their names?**
7 A. Yeah. There was Robert Deja and
8 Walter Siewor.
9 **Q. And when did you speak to Robert**
10 **about your testimony here?**
11 A. He just called me like a week ago
12 and told me that there is some case. And I
13 have to come here. So it was like one time
14 and today.
15 **Q. And you spoke to him again today?**
16 A. Yeah.
17 **Q. When you had this conversation**
18 **with him a week ago did you discuss anything**
19 **else with him?**
20 A. I just -- you know, trying to
21 remember what I design and why you are -- why
22 I'm here.
23 **Q. And how long was that**
24 **conversation?**
25 A. Like 20 minutes. Fifteen, 20
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1 **S. SROKA**
2 A. Yes.
3 **Q. While you were employed with All**
4 **Granite, were you responsible for any of the**
5 **ads or coupons that appeared in mailing**
6 **circulars?**
7 A. Yes.
8 **Q. I show you what's previously been**
9 **marked as Defendant's Exhibit 70. If you**
10 **could take a look at the second page of this**
11 **exhibit which is Bates stamped AGM 0123.**
12 A. Um-hum.
13 **Q. And can you tell me, Mr. Sroka, if**
14 **you've ever seen this document before?**
15 A. Yes.
16 **Q. And what is this document?**
17 A. It's ad for -- I don't know what
18 magazine -- of All Granite Marble.
19 **Q. And do you know if you were**
20 **responsible for creating this ad?**
21 A. Yes. I did the graphic design for
22 this one.
23 **Q. And do you still have any working**
24 **relationship with All Granite?**
25 A. No.
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1 **S. SROKA**
2 minutes.
3 **Q. And did Robert tell you what**
4 **design was at issue here?**
5 A. Yes.
6 **Q. And what did he tell you?**
7 A. He told me that you think our
8 design is similar to your design.
9 **Q. And did he identify what**
10 **particular design?**
11 A. Excuse me?
12 **Q. Did he identify what particular**
13 **design?**
14 A. Yes. He told me that it's Artisan
15 logo. So I checked it on the website how this
16 looks like and actually I don't think it's so
17 similar.
18 **Q. And can you tell me what was the**
19 **reason why you left employment with All**
20 **Granite?**
21 A. I live in Connecticut. There was
22 my family, wife and daughter, so I found a job
23 in the next town. So that's why I move.
24 **Q. And are you still doing graphic**
25 **design?**
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1 **S. SROKA**
2 **Q. And with respect to the**
3 **information that's contained in this ad, who**
4 **would have provided that information to you?**
5 A. Mostly that was Robert.
6 **Q. And with respect to the images**
7 **that appear in the ad, who would have provided**
8 **those to you?**
9 A. Images?
10 **Q. The images of the -- let's take**
11 **the main image I guess of the kitchen.**
12 A. Kitchen is from our database. We
13 got the pictures from location when company
14 did the jobs.
15 **Q. And with respect to the pictures**
16 **of the various sinks on the coupon, do you**
17 **know who provided those pictures?**
18 A. Those are also ours I think.
19 **Q. Were you involved in taking any of**
20 **the pictures of the sinks that appear on the**
21 **coupon?**
22 A. Actually, yes.
23 **Q. Do you recall when -- is this one**
24 **picture or is it a composite of different**
25 **pictures?**
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A. Actually that was separate pictures which I took in our location on Austin Street.

Q. Do you recall when that was?

A. Excuse me?

Q. Do you recall when that picture was taken? Or when these pictures were taken?

A. I'm not sure.

Q. Other than graphic design, did you have any responsibility for marketing or promotion at All Granite?

A. No.

Q. Why don't I show you what's been produced as AGM 197. It's marked as Plaintiff's Exhibit 5.

(Plaintiff's Exhibit 5, document bearing production number AGM 197, marked for identification as of this date.)

BY MR. MALTBIE:

Q. Mr. Sroka, if you can take a look at what's now been marked as Plaintiff's Exhibit 5 and could you tell me if you've ever seen this image before?

A. Not this image but I did this
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S. SROKA

A. I don't know. Those ceramic sinks.

Q. Do you know if this logo was used on any stainless steel sinks?

A. I have no idea.

Q. Do you recall who came up with the term Di-Monte?

A. That was probably Robert. But I don't know.

Q. Do you recall having any involvement in coming up with that term?

A. Excuse me?

Q. Do you recall having any involvement with coming up with that name?

A. If I was involved?

Q. Yes.

A. No.

Q. So is it correct to say that your involvement was in coming up with the font for this name?

A. Yes. But the name was -- you know, Robert provided.

Q. I'll just show you what was previously marked as Plaintiff's Exhibit 4.

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logo.

Q. When you say this logo, you're referring to the Di-Monte logo?

A. Yeah.

Q. Do you recall when you designed this logo?

A. I'm not sure. That would be like the end of 2006 or the beginning of 2007 but I'm not sure.

Q. And was this logo designed for All Granite?

A. Yes.

Q. And who requested that you design this logo?

A. Robert.

Q. And what was your understanding of how this logo would be used?

A. We were talking about it and decide it would be nice to find some nice font and incorporate it into the logo.

Q. Was this logo used on particular type of product?

A. I think it was for those sinks.

Q. I'm sorry. What kind of sinks?

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S. SROKA

Mr. Sroka, looking at what's been marked as Plaintiff's Exhibit 4, could you tell me if you've ever seen this design before?

A. Yes. I did this design.

Q. And do you recall when you did this design? Created this design?

A. Those two designs actually were made in I think same period of time. It's end of 2006, beginning of 2007. But I don't remember the exact date.

Q. And who asked you, if anyone, to create this design?

A. Robert.

Q. And do you recall what Robert's instructions were?

A. To find something that is connected with the Polish tradition.

Q. And what -- did you actually find something connected with Polish tradition?

A. Yes. Actually this logo. This sign it's a crown of one of the Polish kings. Actually -- I'm not sure but it was the first Polish king.

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S. SROKA

Q. This is the crown of the first Polish king?

A. Yes. It's kind of based on original crown.

Q. And did Robert give anything to you in order to help you design this logo?

A. No.

Q. Just the suggestion that he wanted something that would suggest traditional Polish?

A. Yes.

Q. And did you have any understanding with respect to the purpose or use of this design?

A. Yes.

Q. And what was your understanding?

A. For sinks. To use them on sinks.

Q. And any particular types of sinks?

A. Excuse me?

Q. Any particular types of sinks?

A. Actually, I don't know a lot about sinks so...

Q. That's fine. Fair enough.

And so was there a specific

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inspiration for this design?

A. Yes. Like I said, I did the research. We found a few different crowns on which was this one.

Q. And where did you see or find these different crowns?

A. Excuse me?

Q. Where did you see or find these different crowns?

A. On Google.

Q. Do you recall if you printed out or saved any image of the crown that was used for the inspiration for this design?

A. Probably on this time I did this that's for sure. But probably there is nothing there because I clean computers when I left the company.

Q. I'm sorry. You say you took your computer or you changed computers?

A. No, I cleaned all the mess which I left there so...

Q. Okay. And when you say that the design is a crown, are you speaking about any particular part of the design or does the

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whole thing represent the crown?

A. Whole thing.

Q. And looking at the curls which come off the left and right end of the crown, was that something that appeared on the original crown?

A. I think so. But I -- I don't remember. But I think so.

Q. And with respect to the curls that appear below the center of the design, do you recall if those were something that was specifically on the Polish crown?

A. Yeah. I think -- I think there was something like that. And, by the way, it looks nice.

Q. And were you a salaried employee of All Granite?

A. No. No, never.

Q. Were you then paid by job or by something else?

A. Only for my job. My graphic design.

Q. But did they pay you a weekly salary for that or was there some other form

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of compensation?

A. That was per hour.

Q. And did you have any specific written agreement with All Granite with respect to the designs that you created?

A. I think I signed something at the very beginning but that was two years ago so I'm not sure.

Q. And when you first created this design, did you then show it to Robert?

A. Yes.

Q. And did Robert have any suggestions or changes to the design?

A. Actually, I don't remember but I don't think so. I don't remember.

Q. Do you recall if you prepared any different drafts or revisions of the design?

A. Actually, in this particular case that was only one -- I think only one design of this logo and it was this one.

Q. Do you recall if you prepared any other designs for Robert to review in connection -- at this period in time?

A. In this case I don't think so.

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Q. Do you know if you've retained any documents relating to this design or the creation of this design?

A. Excuse me?

Q. Do you know if you have any documents in your possession relating to this design?

A. No.

Q. You don't know or you don't --

A. No, I don't have them.

Q. Now, looking at the design, the central element in the center of the crown, is that figure or element known by any particular design name?

MR. CHIODO: Objection to the form. You can answer if you understand.

A. Actually, no. It's a king symbol which appears in a lot of different signs and logos.

Q. Do you know if it's also referred to as a fleur-de-lis design?

A. Excuse me?

Q. A fleur-de-lis design?

A. Actually, I think it's

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S. SROKA

the sale and distribution of sinks?

A. I don't know.

Q. Do you recall ever seeing any advertisements for Artisan either at the Austin Street address or at any of the All Granite showrooms?

A. Could you repeat the question?

Q. Do you recall ever seeing any advertisements for Artisan products either at the Austin Street address or in any of the All Granite showrooms?

A. No.

Q. Have you designed any other logos or designs for All Granite other than the design depicted in Plaintiff's Exhibit 4 or the design depicted in Plaintiff's Exhibit 5?

A. Yes. Yes, I did.

Q. What other types of logos or designs have you created for All Granite?

A. It was for like laser measurement thing.

Q. For a laser measurement? Was that a service or --

A. No. It's like a tool.

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S. SROKA

fleur-de-lis which is part of the crown.

Q. And just so I -- I've never seen this crown. Would this crown have -- I guess is it four different fleurs-de-lis sort of around the circumference of the crown?

A. Yes. Probably.

Q. I'd just like to show you what's been marked as Plaintiff's Exhibit 3. I'd just like to direct your attention to the fleur-de-lis design next to the word Artisan on the bottom right of this first page of Plaintiff's Exhibit 3. And I believe you indicated that after you spoke to Robert you went on the Artisan website and saw this design?

A. Yes.

Q. And is that the first time that you saw the Artisan design?

A. I'm not sure. Before we do this logo we did research and I saw -- I don't know -- hundred different design but I'm not sure if I saw this before.

Q. Do you know if Artisan and All Granite ever had a business relationship with

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Q. Tool.

Was that a tool that All Granite was selling or using or something else?

A. I don't know if they selling this.

Q. And any other logos or designs you created besides the laser measurement tool?

A. No. Not logos.

Q. Did you ever discuss with Robert the idea of registering a trademark in either the Di-Monte design or the design depicted in Plaintiff's Exhibit 4?

A. No.

Q. Do you know if Robert investigated the possibility of registering these designs as trademarks?

A. I have no idea.

Q. What, to your knowledge, were the responsibilities of Walter who worked at 51 Austin Street?

A. He was responsible for video. Videotaping, editing. Stuff like that.

(Continued on next page to include jurat.)

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1 S. SROKA
2 MR. MALTBIE: Okay. No further
3 questions.

4 MR. CHIODO: I have none.
5 (Time Noted: 12:39 p.m.)
6
7
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20 SEBASTIAN SROKA

21
22 Subscribed and sworn to before me
23 this ____ day of _____, 2008.
24
25

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1 CERTIFICATE
2 STATE OF NEW YORK)

3 : ss.

4 COUNTY OF NEW YORK)

5 I, FRANCIS X. FREDERICK, a
6 Notary Public within and for the State
7 of New York, do hereby certify:

8 That SEBASTIAN SROKA, the
9 witness whose deposition is
10 hereinbefore set forth, was duly sworn
11 by me and that such deposition is a
12 true record of the testimony given by
13 the witness.
14

15 I further certify that I am not
16 related to any of the parties to this
17 action by blood or marriage, and that
18 I am in no way interested in the
19 outcome of this matter.

20 IN WITNESS WHEREOF, I have
21 hereunto set my hand this 12th day of
22 February, 2008.
23
24
25

FRANCIS X. FREDERICK

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1 ----- I N D E X -----
2
3 WITNESS EXAMINATION BY PAGE
4 SEBASTIAN SROKA MR. MALTBIE 4
5
6
7
8
9

10 ----- INFORMATION REQUESTS -----

11 DIRECTIONS: NONE
12 RULINGS: NONE
13 TO BE FURNISHED: NONE
14 REQUESTS: NONE
15 MOTIONS: NONE
16

17 ----- EXHIBITS -----

18 PLAINTIFF'S FOR ID.
19 Exhibit 5
20 document bearing production number
21 AGM 197..... 14
22
23
24
25

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1 NAME OF CASE: ARTISAN v. ALL GRANITE
2 DATE OF DEPOSITION: FEBRUARY 7, 2008
3 NAME OF WITNESS: SEBASTIAN SROKA
4 Reason codes:
5

- 6 1. To clarify the record.
7 2. To conform to the facts.
8 3. To correct transcription errors.

9 Page _____ Line _____ Reason _____
10 From _____ to _____

11 Page _____ Line _____ Reason _____
12 From _____ to _____

13 Page _____ Line _____ Reason _____
14 From _____ to _____

15 Page _____ Line _____ Reason _____
16 From _____ to _____

17 Page _____ Line _____ Reason _____
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19 Page _____ Line _____ Reason _____
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23 Page _____ Line _____ Reason _____
24 From _____ to _____

25 Page _____ Line _____ Reason _____
From _____ to _____

SEBASTIAN SROKA

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